

AMENDED IN ASSEMBLY AUGUST 26, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 27, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 734

Introduced by Senator Price

(Principal coauthor: Assembly Member Galgiani)

(Coauthor: Senator Alquist)

(Coauthors: Assembly Members Buchanan, Furutani, Bonnie Lowenthal,
and Solorio)

February 18, 2011

An act to amend Section 14838.1 of, and to add Section 14838.6 to, the Government Code, and to amend Section 185033 of the Public Utilities Code, relating to small business.

LEGISLATIVE COUNSEL'S DIGEST

SB 734, as amended, Price. High-Speed Rail Authority: small business program: bidding preferences.

Existing law provides for various programs to encourage the participation of small businesses, as certified by the Department of General Services, in state agency contracts, and sets forth the duties of the Director of General Services and the directors of other state agencies in this regard.

Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.

This bill would require the authority, with the assistance of the Department of General Services, to prepare a small business, microbusiness, and disabled veteran business outreach and retention plan by July 31, 2012, in order to ensure that the authority annually meets the small business participation goals established by Executive Order S-02-06.

This bill would require the authority to hold a hearing on the draft plan at least one month before the board meeting at which the authority intends to act on the proposed plan. The bill would require that all bidders' conferences convened by the authority include a presentation of the plan and the state's small business participation goals. ~~The bill would require an additional price preference or score of 2.5% of the bid amount to be granted to qualified state-certified microbusinesses.~~

The bill would provide that contracts financed by the authority with bond proceeds from the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century shall be subject to the provisions of the Small Business Procurement and Contract Act.

Existing law requires the authority to prepare, publish, adopt, and submit to the Legislature a business plan containing specified elements beginning January 1, 2012, and every 2 years thereafter.

This bill would require the authority to include in that business plan or in an addendum a strategy for ensuring the participation of California-certified small businesses in contracts awarded by the authority with state funds, or eligible federal funds during all phases of the project. The bill would also require the authority to adopt, by July 31, 2012, a small business, microbusiness, and disabled veteran business enterprise outreach and retention plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In order to keep faith with the promise to promote California
4 jobs following the passage of the Safe, Reliable High-Speed
5 Passenger Train Bond Act for the 21st Century, the state should
6 aid, counsel, assist, and protect, to the maximum extent possible,
7 the interests of small businesses, including microbusinesses.

8 (b) California's microbusinesses are known to bring real
9 diversity to local economies and the state and deserve a fair share
10 of contracts awarded for the high-speed rail project. Although
11 microbusinesses comprise over 80 percent of California's certified
12 small businesses, and while it was the state's intent to afford
13 microbusinesses the same opportunities as other small businesses
14 in competing for state contracts, many microbusiness owners are
15 disadvantaged when competing against their larger small business
16 counterparts. Data compiled by the Department of General Services
17 shows that of the \$2.4 billion of contract dollars issued by state
18 agencies to small businesses and microbusinesses in fiscal year
19 2008–09, microbusinesses were awarded only 37 percent, or \$866
20 million worth of state contracting. Moreover, of the 103,371
21 contracts issued during the same timeframe, microbusinesses
22 received only 42,140, or 41 percent of the contracts issued by the
23 state.

24 (c) It is beneficial to the state to promote and facilitate the fullest
25 possible participation by California workers to train for new jobs
26 and careers in today's global economy.

27 (d) Therefore, it is essential to ensure that a fair proportion of
28 the total purchases and contracts or subcontracts for property and
29 services for California's high-speed rail system be placed with
30 these microbusinesses.

31 SEC. 2. Section 14838.1 of the Government Code is amended
32 to read:

33 14838.1. (a) In order to encourage the participation of small
34 businesses in the construction, alteration, demolition, repair, or
35 improvement, of the state's infrastructure, as provided in the
36 infrastructure-related bond acts of 2006 and 2008, as described in
37 subdivision (c), each state agency awarding contracts financed
38 with the proceeds of these bonds shall do all of the following:

1 (1) Establish a 25 percent small business participation goal in
2 all contracts it financed with the proceeds of the
3 infrastructure-related bond acts of 2006 and 2008.

4 (2) Advertise, in the California State Contracts Register, all
5 upcoming opportunities to bid on contracts for projects funded by
6 the infrastructure-related bond acts of 2006 and 2008, described
7 in subdivision (c), and include in the advertisement an Internet
8 link to information for prospective bidders, including, but not
9 limited to, general bidding procedures and how to properly prepare
10 a bid for those contracts.

11 (3) Provide information to California small businesses regarding
12 training and technical assistance that is available to assist these
13 small businesses in understanding and bidding on contracts for
14 projects funded by the infrastructure-related bond acts of 2006 and
15 2008, described in subdivision (c).

16 (b) For purposes of this section, “small business” has the same
17 meaning as set forth in subdivision (d) in Section 14837.

18 (c) For purposes of this section, all of the following measures
19 are deemed to be the infrastructure-related bond acts of 2006 and
20 2008:

21 (1) The Highway Safety, Traffic Reduction, Air Quality, and
22 Port Security Bond Act of 2006 (Chapter 12.49 (commencing with
23 Section 8879.20) of Division 1 of the Government Code).

24 (2) The Housing and Emergency Shelter Trust Fund Act of 2006
25 (Part 12 (commencing with Section 53540) of Division 31 of the
26 Health and Safety Code).

27 (3) The Kindergarten-University Public Education Facilities
28 Bond Act of 2006 (Part 69 (commencing with Section 101000) of
29 the Education Code).

30 (4) The Disaster Preparedness and Flood Prevention Bond Act
31 of 2006 (Chapter 1.699 (commencing with Section 5096.800) of
32 Division 5 of the Public Resources Code).

33 (5) The Safe Drinking Water, Water Quality and Supply, Flood
34 Control, River and Coastal Protection Bond Act of 2006 (Division
35 43 (commencing with Section 75001) of the Public Resources
36 Code).

37 (6) The Safe, Reliable High-Speed Passenger Train Bond Act
38 for the 21st Century (Chapter 20 (commencing with Section 2704)
39 of Division 3 of the Streets and Highways Code).

1 (d) For the purposes of this section, “state agency” includes
2 each agency provided for in Section 12800 and each state entity
3 included in Section 10335.7 of the Public Contract Code in which
4 the head of the agency is appointed by the Governor. For the
5 purposes of this section, “state agency” also includes the
6 High-Speed Rail Authority.

7 (e) This section does not require the expenditure of the proceeds
8 of the sale of the bonds described in this section, except as
9 permitted by the measure authorizing the issuance of the bond.

10 (f) On or before August 1, 2009, and annually thereafter, each
11 state agency that has awarded any contract financed with the
12 proceeds of the infrastructure-related bond acts of 2006 and 2008
13 in the previous fiscal year shall report to the Director of General
14 Services statistics comparing the small business and microbusiness
15 participation dollars for contracts funded by these bonds to the
16 total contract dollars for contracts funded by these bonds. If an
17 agency did not meet its participation goal, then the agency shall
18 include in its report a plan of action to meet its participation goal
19 during the current fiscal year.

20 SEC. 3. Section 14838.6 is added to the Government Code, to
21 read:

22 14838.6. (a) The High-Speed Rail Authority, with the
23 assistance of the department, shall prepare a small business,
24 microbusiness, and disabled veteran business enterprise outreach
25 and retention plan in order to ensure that the authority annually
26 meets the small business participation goal established by
27 Executive Order S-02-06. In developing the plan, the authority
28 shall consider examples of existing small business programs used
29 by other public agencies in California and the United States.

30 (b) The plan required by this section shall be adopted by July
31 31, 2012. Prior to the adoption of the plan, the authority shall hold
32 a hearing on the draft plan at a monthly board meeting held at least
33 one month before the board meeting at which the authority intends
34 to act on the proposed plan. Both the draft plan and the adopted
35 plan shall be posted on the homepage of the authority’s Internet
36 Web site. The authority shall include in all its procurement
37 documents a summary of the plan and a link to the entire plan on
38 its Internet Web site and shall implement the outreach strategy.

39 (c) All bidders’ conferences convened by the authority shall
40 include a presentation of the plan and the state’s small business

1 participation goals. The authority shall request a representative of
2 the department to attend all bidders' conferences and to answer
3 all questions regarding this chapter.

4 ~~(d) In addition to the preferences otherwise required by this~~
5 ~~chapter, the authority shall grant an additional price preference or~~
6 ~~score of 2.5 percent of the bid amount to qualified state-certified~~
7 ~~microbusinesses.~~

8 SEC. 4. Section 185033 of the Public Utilities Code is amended
9 to read:

10 185033. (a) The authority shall prepare, publish, adopt, and
11 submit to the Legislature, not later than January 1, 2012, and every
12 two years thereafter, a business plan. At least 60 days prior to the
13 publication of the plan, the authority shall publish a draft business
14 plan for public review and comment. The draft plan shall also be
15 submitted to the Senate Committee on Transportation and Housing,
16 the Assembly Committee on Transportation, the Senate Committee
17 on Budget and Fiscal Review, and the Assembly Committee on
18 Budget. The business plan shall identify all of the following: the
19 type of service the authority anticipates it will develop, such as
20 local, express, commuter, regional, or interregional; a description
21 of the primary benefits the system will provide; a forecast of the
22 anticipated patronage, operating and maintenance costs, and capital
23 costs for the system; an estimate and description of the total
24 anticipated federal, state, local, and other funds the authority
25 intends to access to fund the construction and operation of the
26 system; and the proposed chronology for the construction of the
27 eligible corridors of the statewide high-speed train system. The
28 business plan shall also include a discussion of all reasonably
29 foreseeable risks the project may encounter, including, but not
30 limited to, risks associated with the project's finances, patronage,
31 right-of-way acquisition, environmental clearances, construction,
32 equipment, and technology, and other risks associated with the
33 project's development. The plan shall describe the authority's
34 strategies, processes, or other actions it intends to utilize to manage
35 those risks.

36 (b) (1) In addition to the requirements of subdivision (a), the
37 business plan shall include, but need not be limited to, all of the
38 following elements:

39 (A) Using the most recent patronage forecast for the system,
40 develop a forecast of the expected patronage and service levels

1 for the Phase 1 corridor as identified in paragraph (2) of subdivision
2 (b) of Section 2704.04 of the Streets and Highways Code and by
3 each segment or combination of segments for which a project level
4 environmental analysis is being prepared for Phase 1. The forecast
5 shall assume a high, medium, and low level of patronage and a
6 realistic operating planning scenario for each level of service.
7 Alternative fare structures shall be considered when determining
8 the level of patronage.

9 (B) Based on the patronage forecast in subparagraph (A),
10 develop alternative financial pro formas for the different levels of
11 service, and identify the operating break-even points for each
12 alternative. Each pro forma shall assume the terms of subparagraph
13 (J) of paragraph (2) of subdivision (c) of Section 2704.08 of the
14 Streets and Highways Code.

15 (C) Identify the expected schedule for completing environmental
16 review, and initiating and completing construction for each segment
17 of Phase 1.

18 (D) Identify the source of federal, state, and local funds available
19 for the project that will augment funds from the bond act and the
20 level of confidence for obtaining each type of funding.

21 (E) Identify written agreements with public or private entities
22 to fund components of the high-speed rail system, including
23 stations and terminals, any impediments to the completion of the
24 system, such as the inability to gain access to existing railroad
25 rights-of-way.

26 (F) Identify alternative public-private development strategies
27 for the implementation of Phase 1.

28 (2) To the extent feasible, the business plan should draw upon
29 information and material developed according to other
30 requirements, including, but not limited to, the preappropriation
31 review process and the preexpenditure review process in the Safe,
32 Reliable High-Speed Passenger Train Bond Act for the 21st
33 Century pursuant to Section 2704.08 of the Streets and Highways
34 Code. The authority shall hold at least one public hearing on the
35 business plan and shall adopt the plan at a regularly scheduled
36 meeting. When adopting the plan, the authority shall take into
37 consideration comments from the public hearing and written
38 comments that it receives in that regard, and any hearings that the
39 Legislature may hold prior to adoption of the plan.

1 (c) In the business plan to be submitted on January 1, 2012, or
2 as an addendum to that plan to be submitted on March 1, 2012,
3 the authority shall include a strategy for ensuring the participation
4 of California-certified small businesses in contracts awarded by
5 the authority with state funds, or eligible federal funds, during all
6 phases of the project.

O